

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

In re: LANTUS DIRECT PURCHASER
ANTITRUST LITIGATION

Nos. 16-12652-LTS-JGD

STIPULATION AND [PROPOSED] SCHEDULING ORDER

AND NOW, this _____ day of _____, 2023, upon consideration of the parties' stipulated scheduling proposal, it is hereby ORDERED that the scheduling proposal below is GRANTED.

It is hereby ordered that:

1. The Court adopts the scheduling proposal as set out below, including [Plaintiffs'/Defendant's] proposed schedule of events after expert discovery on Economic Issues. Accordingly, the following deadlines shall apply in this case:

Event	Date
Plaintiffs file amended complaint	Friday March 3, 2023
Intervenor Plaintiffs serve 26(a)(1) disclosures	Friday, March 24, 2023 (21 days after filing of amended complaint)
Defendant answers amended complaint and serves Requests for Production and Interrogatories on Intervenor Plaintiffs ¹	Monday, April 3, 2023 (30 days after filing of amended complaint)
Close of Intervenor Plaintiff Discovery	Thursday, September 28, 2023

¹ "Which shall be limited to the categories of documents and information previously sought from Direct Purchaser Plaintiffs but exclude discovery limited solely to issues of the class certification."

Event	Date
Party with the burden of proof to serve opening expert reports for all issues other than Economic Issues ² ³	Thursday, October 5, 2023
Opposing expert reports for all issues other than Economic Issues due	Thursday, December 7, 2023
Rebuttal expert reports for all issues other than Economic Issues due	Thursday, January 11, 2024
Deadline to serve Requests for Admission ⁴	Thursday, January 18, 2024
Deadline to depose experts for all issues other than Economic Issues ⁵	Thursday, February 8, 2024
Deadline to file a Rule 56 motion (one per side) and Daubert motions ⁶	Thursday, March 7, 2024
Date to file opposition to Rule 56 motions and oppositions to Daubert motions	Thursday, April 18, 2024

² For purposes of expert reports, the parties agree that “Economic Issues” means (i) market definition, (ii) market power, and (iii) the calculation of any damages attributable to the alleged conduct.

³ On this date, Sanofi shall serve the opening expert report(s) on the issue of whether its submission of the Device Patents to FDA for listing in the Orange Book “was the result of a reasonable, good-faith attempt to comply with the Hatch-Waxman” statute and regulations. *In re Lantus Direct Purchaser Antitrust Litig.*, 950 F.3d 1, 14 (1st Cir. 2020). The Device Patents are U.S. Patent Nos. 7,918,833 (‘833); 8,512,297 (‘297); 8,556,864 (‘864); 8,603,044 (‘044); 8,679,069 (‘069); 8,992,486 (‘486); 9,011,391 (‘391); 9,233,211 (‘211); 9,408,979 (‘979); 9,526,844 (‘844); 9,533,105 (‘105); 9,561,331 (‘331); 9,604,008 (‘008); 9,604,009 (‘009); 9,610,409 (‘409); 9,623,189 (‘189); 9,717,852 (‘852); 9,775,954 (‘954); and 9,827,379 (‘379). The Plaintiffs shall serve opening expert reports on all other issues (other than Economic Issues) on this date. Plaintiffs shall serve opening expert reports on Economic Issues as set forth below.

⁴ Responses to Requests for Admission are due 30 days after they are served.

⁵ Each expert shall be deposed once. The parties shall provide two available deposition dates for each expert when their opening or opposition reports are served, with one date falling before rebuttal reports are due and one falling after rebuttal reports are due but before the deadline to complete expert depositions.

⁶ For the avoidance of doubt, the parties have agreed that there will be only one additional round of summary judgment motions. No party shall move for full or partial summary judgment on Economic Issues, nor seek to accomplish similar relief through a Rule 60 motion, motion *in limine*, or any other pretrial motion. Daubert motions shall be served on this date for all experts other than experts submitting reports on Economic Issues. Daubert motions regarding experts submitting reports on Economic Issues are addressed below.

Event	Date
Date to file reply in support of Rule 56 motion and replies in support of Daubert motions	Thursday, May 9, 2024
Hearing on Rule 56 motions and any Daubert motions	At the Court's convenience
If case is not resolved on Summary Judgment: Opening expert reports addressing Economic Issues due	(a) 30 days after the Court's ruling on Magistrate Judge's Report and Recommendation on Rule 56 motions and any objections thereto (the "Summary Judgment Ruling"); or (b) if the Court has not issued the Summary Judgment Ruling by August 8, 2024, on Thursday, September 5, 2024. ⁷
Opposition expert reports addressing Economic Issues due	6 weeks after opening reports are served
Rebuttal expert reports addressing Economic Issues due	5 weeks after opposition reports are served
Deadline for depositions of experts who served reports on Economic Issues	2 weeks after rebuttal reports are served

Defendant's Position	
If case is not resolved on Summary Judgment, the Parties, after meeting and conferring, shall file a joint status report stating their joint or separate positions as to a schedule for the remainder of the case including trial.	14 days from the Court's ruling on Magistrate Judge's Report and Recommendation on Rule 56 motions and any objections thereto

⁷ If no Summary Judgment Ruling in this case has issued by August 8, 2024, the parties shall meet and confer regarding the desirability of extending this deadline further and reserve the right to seek an extension from the Court either jointly or unilaterally. If an extension request is filed and denied, the deadline to serve opening expert reports on Economic Issues shall be extended to the date that is 30 days from the Court's order denying the extension request.

Plaintiffs' Position	
Parties exchange Rule 26(a)(3) Disclosures, including (a) trial exhibit list, and (b) witness list, indicating whether witness will testify at trial or through deposition	<input type="checkbox"/> Plaintiffs propose] 1 week after expert deposition deadline
Parties exchange objections to Rule 26(a)(3) disclosures	<input type="checkbox"/> Plaintiffs propose] 1 week after parties exchange Rule 26(a)(3) Disclosures
Parties file motions <i>in limine</i> ⁸	<input type="checkbox"/> Plaintiffs propose] 1 week after Rule 26(a)(3) objections
Parties file oppositions to motions <i>in limine</i>	<input type="checkbox"/> Plaintiffs proposal] 1 week after parties file motions <i>in limine</i>
Parties file replies in support of motions <i>in limine</i>	<input type="checkbox"/> Plaintiffs propose] 1 week after motions <i>in limine</i> oppositions
Parties exchange proposed jury instructions	<input type="checkbox"/> Plaintiffs propose] 1 week after motions <i>in limine</i> replies
Parties exchange proposed <i>voir dire</i> questions	<input type="checkbox"/> Plaintiffs propose] 1 week after jury instructions exchanged
Parties file proposed final pretrial order, proposed jury instructions, memoranda of law in support of jury instructions, proposed special verdict form, proposed <i>voir dire</i> questions, copies of Rule 26(a)(3) disclosures, and, if desired, trial briefs	<input type="checkbox"/> Plaintiffs propose] 2 weeks after <i>voir dire</i> questions exchanged
Final pretrial conference	<input type="checkbox"/> Plaintiffs propose] 1 week after parties file proposed final pretrial order, at the Court's convenience
Trial ready date	<input type="checkbox"/> Plaintiffs propose] trial ready 2 weeks after final pretrial conference, trial date to be set at the Court's convenience

⁸ All Daubert motions on experts submitting reports on Economic Issues shall be filed as motions *in limine*. No motions *in limine* (or Daubert motions) on market definition or market power shall be permitted.

SO ORDERED.

Dated: _____

Honorable Judith G. Dein
United States Magistrate Judge

So stipulated and agreed to by the Parties:

Dated: March 3, 2023

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